THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No. 12760 of 2002

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Dated: 27.02.2006

Between:

N.S. Gupta, S/o. Chandraiah,
R/o. Kondurg (Post and Village), kondurg Mandal,
Mahaboobnagar District.

..... PETITIONER

AND

Andhra Pradesh State Road Transport Corporation,

Rep. by its Depot Manager, Pargi Depot, Pargi,
Ranga Reddy District and another.

.....RESPONDENTS

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THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12760 of 2002

O r d e r:

The award dated 13.08.2001, passed by Labour Court-II, Hyderabad, in I.D. No. 176 of 2000, is called in question in this writ petition.

The petitioner was appointed as Conductor in respondent No.1-A.P.S.R.T.C. in 1972. On 25.10.1997, while he was conducting the bus service on the route Gulbargah to Hyderabad, a check was exercised, and for certain cash and ticket irregularities, he was issued a charge memo. Thereupon, a charge sheet was issued to the petitioner on 07.11.1997. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 30.12.1997 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 15.01.1998, the respondents ordered his removal. Assailing the order of removal, the petitioner

raised industrial dispute in I.D. No. 176 of 2000, which the Labour Court vide the award impugned in the writ petition, dismissed the I.D. confirming the order of removal.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that in the enquiry except the petitioner and TTIs no passenger was examined and there is no supporting evidence to establish the charges leveled against the petitioner. He submits that the passengers are regular passengers and they made use of the old tickets for which the petitioner is not responsible. He further submits that the TTIs have failed to check the cash in spite of specific request made by the petitioner, and in the absence of verifying the cash by the TTIs, the Enquiry Officer cannot come to the conclusion that the petitioner reissued the tickets, as such, the enquiry stood vitiated. He submitted that the petitioner has not misappropriated any amounts, much less the ticket amounts. He further submitted that the petitioner is at the verge of retirement, and the punishment of removal from service imposed upon the petitioner is disproportionate. He, thus, prayed to set aside the award passed by the Labour Court and allow the writ petition.

The respondents filed counter. Reiterating the counter averments, the learned Standing Counsel for the respondents contended that the petitioner has unclean service record, and this is evident from the fact that he suffered punishment of deferment of increments 6 times, he was warned/censured 19 times, his security deposit was forfeited twice, he was suspended thrice and removed from service once in the year 1977 and appointed afresh as per the order in the appeal. He submitted that the petitioner re-issued the issued tickets and indulged in tampering of the S.R., and therefore, his plea that he did not misappropriate any amount, is incorrect. He submitted that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct of misappropriation, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, which was confirmed by the Labour Court, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of

the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai,** the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry and the domestic enquiry was held valid by the Labour Court through its order dated 05.02.2001. In the departmental enquiry, the Enquiry Officer, on consideration of the evidence of the checking officials, statements of the passengers concerned and the entries in S.Rs, found that the petitioner having collected fare from the passengers, re-issued the already issued tickets, and thus pocketed the value of the said tickets, and accordingly held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court on

re-appreciation of the entire material on record, held that the petitioner by issuing the re-issued tickets had *mala fide* intention to make unlawful profit, causing loss to the Corporation, and considering the fact that re-issuing tickets and making alterations in the S.R., constitute grave irregularity, which stood proved in the enquiry, held that the punishment of removal from service imposed by the disciplinary authority on the petitioner cannot be said to be disproportionate to the proved misconduct, and accordingly upheld the said punishment, and no exception can be taken thereto, more so when the petitioner failed to show that there was procedural impropriety in the imposition of punishment.

Further, in ***Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane***[2], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to betaken into consideration.

In the instant case, the charges leveled against the petitioner stood proved, and having regard to the gravity and seriousness of the proved charges, the respondents having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, upholding the punishment of removal from service imposed by the disciplinary authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 27.02.2006

Nsr/Ksr